**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 340 OF 2005**

**IN**

**SECOND APPEAL ST. NO. 21779 OF 2004**

Smt. Bharati Namdeo Mhatre .... Applicant
(Original deft. No. 3)

Versus

Smt. Bamibai Vitthal Patil .... Respondents
and Ors.

Mr. Rahul S. Thakur for the Applicant
Mr. R.P. Walavalkar for Respondent No. 1, 3(b) to 3(k)
Mr. R.B. Parab for Respondent No. 2

**CORAM : S.B. DESHMUKH, J.**
DATE : 17TH OCTOBER, 2006

P.C.

1) Heard learned Counsel for the Applicant and Respondents.

2) By this application, the Applicant is seeking condonation of about 1 year, 11 months and 26 days delay occured in filing Second Appeal in this Court. Certified copy of the judgment including the second appeal, was applied by the Applicant and it was Civil Appeal No. 195 of 1995. According to the Applicant, she was not aware about the decision given by the first Appellate Court. She is illiterate, poor lady. She received notice of execution proceeding/ Darkhast on or about July 2004. Thereafter she obtained certified copy and filed Appeal in this Court.

3) On behalf of Respondent No. 3(b) to 3(k) and respondent No. 1, Affidavit is filed by one Smt. Namubai Mukund Gavand. Learned Counsel for the Respondent No. 1 and 3(a) to 3(k) submits,that, details regarding filing of the Application for certified copy and obtaining the copies from the Office of learned District Judge are not given in the application and according to him, there is no justifiable reason, disclosed in the application of condonation of delay.

4) Having heard, the learned counsel for the parties, in my view, case for condonation of delay is established. The inconvenience caused to the Respondents, can be considered by imposing appropriate cost. The Applicant’s suit was for partition and

possession of a share in the suit properties. On accont of delay, legitimate right of applicant if any, cannot be put to an end.

5) In the result, Civil Application is partly allowed. Delay of about 1 year, 11 months and 26 days caused in filing the second appeal in this Court, is condoned subject to the payment of cost of Rs.500/-, out of which Rs.250/- to be paid by Respondent Nos. 3(a) to 3(k) and Rs. 250/- to Respondent Nos. 1 and 2. Amount of cost be deposited within four weeks from today. Civil Application is accordingly allowed and disposed of.

**( S.B. DESHMUKH, J.)**